
(2004) 07 BOM CK 0139
In the Bombay High Court
Case No : Writ Petition No. 391 of 1989

Sunderabai Maroti Metkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-07-2004

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 36A, 36A(4)
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 6

Citation : (2005) 2 ALLMR 751 : (2005) 1 BomCR 913

Hon'ble Judges : Marlapalle B.H., J

Bench : Single Bench

Advocate : P.K. Deshmukh, for the Appellant; C.K. Shinde, A.G.P. and V.D. Salunke, for Respondent Nos. 2A to 2C and V.R. Sonwalkar, for Respondent No. 4(a), for the Respondent

Final Decision : Dismissed

Judgement

Marlapalle B.H., J.—Agricultural land, admeasuring 1 Hectare and 97 Ares in Survey No. 12/1 of village Suregaon in Hingoli district was originally owned by one Shri Subhan who was a tribal. He sold, out of the said total holding, land to the extent of 1 Hectare [2 Acres and 20 Gunthas] to one Shri Vishwanath s/o Satawappa Kasar, the present respondent No. 4, by a registered sale-deed dated 18th July, 1978 and bearing No. 1806. The said transferee belonged to "Kasar" caste and he was not a tribal. By sale-deed dated 12 the September, 1979, registered under No. 2219, the respondent No. 4 sold the same land to the present petitioner, who is a tribal. It is also not in dispute that when the transfer was effected pursuant to the sale-deed dated 18th July, 1978 and subsequently on 12th September, 1979 there was no permission obtained, in advance, from the Collector by either of the parties.

2. The Additional Tahsildar, therefore, initiated suo motu inquiry u/s 36(A) of the Maharashtra Land Revenue Code, 1966 (the M.L.R. Code, for short), in respect of the said transferred land to the extent of 2 Acres and 20 Gunthas from the

possession /ownership of the tribal i.e. Subhan Bhujaji Karhale. By his decision dated 20th July, 1988 the Additional Tahsildar, Hingoli held that the sale-deed under Registration No. 1806 dated 18th July, 1978 signed by Subhan s/o Bhujaji Karhale in favour of the present respondent No. 4 was invalid and so was the case with the subsequent sale-deed dated 12th September, 1979 signed by the present respondent No. 4 in favour of the petitioner - a tribal belonging to "Aundh" caste. The suo motu proceedings u/s 36(A)(5) of the M.L.R. Code were, thus, allowed and the suit land was directed to be restored to Smt. Salubai w/o Subhanrao Karhale by evicting the petitioner or her successors in possession of the suit land.

3. Being aggrieved by the said order, gassed by the Additional Tahsildar, Hingoli an appeal, u/s 6 of the Maharashtra Restoration of Lands to the Scheduled Tribes Act, 1974 (for short, the Restoration of Lands Act) came to be filed before the Maharashtra Revenue Tribunal and by its judgment and order dated 16th of December, 1988 the Tribunal dismissed the appeal filed by the present petitioner. Hence, this petition.

4. Shri Deshmukh, the learned Counsel for the petitioner urged that the Additional Tahsildar allowed the suo motu proceedings initiated u/s 36(A) of the M.L.R. Code by him, without issuing any notice or without hearing the present petitioner and, therefore, the said order was in breach of the principles of natural justice. It was further contended that the petitioner being herself a tribal her conveyance dated 12th September, 1979 with a non tribal did not come within the ambit of Section 36(A) of the M.L.R. Code and, in any case, the limitation of three years to initiate suo motu inquiry under the said section was breached and, therefore, the suo motu proceedings initiated by the Additional Tahsildar were without authority in law. It was not permissible for the Additional Tahsildar to institute suo motu inquiry after a period of three years had elapsed with from 18th July, 1978 or 12th September, 1979, as the case may be and, therefore, the initial order, which was the subject-matter of appeal before the Tribunal, was void ab initio, urged the learned Counsel.

5. The Tribunal has considered, at length, the first two issues raised by Shri Deshmukh and noted that the initial transfer by the sale-deed dated 18th July, 1978 was hit by the provisions of Section 36(A) of the M.L.R. Code in as much as there was no permission obtained from the Collector before the said transaction was completed and the subject land was handed over to respondent No. 4. The subsequent transfer to the petitioner, by the respondent No. 4 vide sale-deed 12th September, 1979, though between a non-tribal and tribal, was not relevant and, in any case, when the respondent No. 4 title itself was illegal he had no authority in law firstly to come in possession of the suit land and subsequently alienate it in favour of the present petitioner by way of a registered sale-deed dated 12th September, 1979. Once the occupancy from the tribal was transferred to the non-tribal in contravention of sub-section (1) i.e. without sanction of the Collector, all the subsequent transfers were void ab initio and they would be

transactions between unauthorised possessor of the land on one hand and the third parties buying such land on the other hand. These findings, recorded by the Tribunal, do not call for any interference while deciding this petition under Article 227 of the Constitution as they do not suffer from any errors, leave alone manifest errors, on the face of the record, either on the point of law or any issues of facts.

6. However, the preliminary issue raised, for the first time in this petition, regarding the limitation to institute suo motu inquiry u/s 36(A) of the M.L.R. Code deserves due consideration. Shri Deshmukh referred to the provisions of Clause (4) of Section 36(A) of M.L.R. Code and submitted that prior to its amendment by Maharashtra 1 of 1991 the period of limitation for such inquiries was only for three years and the Additional Tahsildar had instituted the inquiry on 17th November, 1987 which indicated that there was a gap of eight-to-nine years with reference to the sale-deed dated 12th September, 1979 or 18th July, 1978. When there was a statutory bar of limitation, the suo motu proceedings had no sanction in law and the Additional Tahsildar, thus, initiated suo motu inquiry and passed an order illegally. Shri Salunke, the learned Counsel for the respondent Nos. 2-A to 2-C, on the other hand, submitted that the issue of limitation did not arise in the suo motu proceedings instituted by the Additional Tahsildar and the petitioner was fully aware of this legal position lest she would have taken up this issue before the Tribunal. By referring to the exhaustive reasoning given by the Tribunal in the impugned order Shri Salunke submitted that this issue of limitation was not obviously agitated by the petitioner in the appeal decided by the Tribunal and the same has been taken up in this petition only to make out a ground and by way of an after thought.

7. The Restoration of Lands Act is applicable to the transfers of land belonging to a tribal and made in favour of a non-tribal during the period commencing on the 1st day of April, 1957 and ending on the 6th day of July, 1974. It, thus, does not cover such transfers which are made beyond 6th of July, 1974. The said Restoration of Lands Act was brought into force by the Government of Maharashtra in 1975. The scheme of Section 36 of the M.L.R. Code also provides for restrictions on occupancies to be transferred and occupancies of the persons belonging to the Scheduled Tribes shall not be transferred except with the previous sanction of the Collector and if there are any such transfers, without such permission under sub-section (3) of Section 36 of the M.L.R. Code, the Collector has the powers for placing the original tribal in possession of the land. These transfers contemplated within the ambit of Section 36 of the M.L.R. Code are all transfers i.e. transfers to the non-tribals or tribals. It appears that the legislature having realised that there was no specific provision to deal with the transfers of land from tribal to non-tribal on the lines of the scheme of the Restoration of Lands Act, effected after 6th of July, 1974 and, thus, Section 36(A) came to be added in the M.L.R. Code by Maharashtra 35 of 1974. In its original form subsection (4) of Section 36 read as under :

"36-A. Restrictions on transfers of occupancies by Tribals :- (1).....

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, it is noticed that any occupancy has been transferred in contravention of sub-section (i), the Collector shall, either suo motu or on application of any person interested in such occupancy made within three years from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decide the matter."

Thus, there was a limitation of three years from the date of the transfer of occupancy to hold an inquiry in the prescribed manner on an application of any person interested in such occupancy. This period of three years, as per the petitioner, came to be enlarged to thirty years by the amendment of 1991 and the amended sub-section (4) of Section 36(A) reads as under :

"36-A. Restrictions on transfers of occupancies by Tribals : - (1) ...

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, it is noticed that any occupancy has been transferred in contravention of subsection (1), the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on an application made by any person interested in such occupancy, within thirty years from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decide the matter."

8. It is contended by Shri Deshmukh, the learned Counsel for the petitioner that the period of three years as prevailed before the amendment of 1991 was applicable for both the inquiries viz. the inquiry initiated suo motu by the Collector as well as the inquiry to be initiated on an application of any person interested in such occupancy. The moot question, therefore, that arises for consideration is, whether the limitation of three years, as set out in subsection (4) of Section 36-A of the M.L.R. Code, prior to the amendment of 1991, is applicable only to an application of any person interested in such occupancy or to both the inquiries viz. a suo motu inquiry as well as an inquiry made on an application of any interested person.

9. The scheme for restoration contemplated u/s 36-A of the M.L.R. Code is akin to the scheme of Section 4 of the Restoration of Lands Act and rightly so because both the provisions are meant for restoration of agricultural land to a tribal by setting aside the transfers from tribal to non-tribal if such transfers were without permission of the Collector. Section 4 of the Restoration of Lands Act reads thus :

"4. Restoration of lands of persons belonging to Scheduled Tribes. Where any land of a tribal is at any time on or after the 1st day of April, 1957 and before the 6th of July, 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession of a non-tribal transferee

and has not been put to any non-agricultural use on or before the 6th day of July, 1974 then the Collector shall, notwithstanding anything contained in any law for the time being in force either suo motu any time or on an application by the Tribal made within three years from the commencement of this Act and after making such inquiry as he thinks fit, direct that the land shall subject to the provisions of sub-section (4) of Section 3, be restored to the tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-tribal transferee in respect of such land in accordance with the relevant tenancy law shall be refunded to such non-tribal transferee either in lump sum or in such annual instalment not exceeding twelve (with simple interest at 4 1/2 per cent, per annum as the Collector may direct. The provisions of Clauses (d), (e), (f) and (g) of sub-section (4) of Section 3 shall, so far as may be, apply in relation to the recovery of the amount from the tribal and payment thereof to the non-tribal transferee and the persons claiming encumbrances, if any :

Provided that, where land is purchased or acquired by a non-tribal transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the tribal-transferor."

The said Act was brought into force from 1st November, 1975 amended so as to enlarge the limitation of three years to thirty years by Maharashtra 1 of 1991 i.e. by the same amendment as was incorporated in sub-section (4) of Section 36-A of the M.L.R. Code. Section 4 of the Restoration of Lands Act clearly shows that there is no limitation set out on the Collector's power to initiate inquiries suo motu and such inquiries can be initiated at any time. However, if the inquiries were required to be commenced on an application by the tribal then the limitation was initially three years from the commencement of the Act and subsequently it has been extended to thirty years. The intention of the legislature in doing so is apparent viz. the welfare of the Scheduled Tribes which required special protection against exploitation so as to fulfil the constitutional guarantee of States policy enshrined under Article 46. The Restoration of lands Act is nothing but an instrument of distributive justice and is intended to alleviating operation, redressing bargaining imbalance, cancelling unfair disadvantages and generally overseeing and ensuring probate and fair dealing. It seeks to reopen transactions between parties having unequal bargaining power resulting in transfer of title from one to another due to force of circumstances. In the case of Udhav Uttam Patil Vs. Daga Holkya Bhil since deceased through L.Rs. and Others, this Court, while interpreting some of the provisions of the Restoration of Lands Act, inter alia noted :

"14.....To read the provisions more harmoniously and for the welfare of the tribals, justice demands that such provisions must be read with flexibility and the rule of rigidity should have no place....."

10. This discussion regarding the scheme of Section 4 of the Restoration of Lands

Act is required to be kept in mind while examining the issue raised by the petitioner. Sub-section (4) of Section 36-A of the M.L.R. Code, prior to its amendment in 1991, clearly stated that the Collector shall, either suo motu or on application of any person interested in such occupancy, may within three years from the date of transfer of occupancy hold an inquiry in the prescribed manner and decide the matter if such transfers were on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974. This provision could be split and read in the following two parts viz.:

(i) the Collector shall suo motu hold an inquiry in the prescribed manner and decide the matter; and

(ii) the Collector shall on an application of any person interested in such occupancy made within three years from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decide the matter.

11. The words "hold an inquiry in the prescribed manner and decide the matter" are applicable in the suo motu proceeding as well as the proceeding initiated on an application of any person interest but the period of limitation of three years cannot be made applicable to the first part i.e. the suo motu inquiry initiated by the Collector. This could be for the reason that it being the similar scheme of Section 4 of the Restoration of Lands Act where there is no limitation imposed on the Collector suo motu powers being exercised for holding inquiry for restoration of land to the tribal. The legislature chose to replace the words "the Collector shall, either suo motu or on an application of any person interested in such occupancy may within three years" by the words "the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on an application made by any person interested in such occupancy, within thirty years" so as to fall in line with the scheme of Section 4 of the Restoration of Lands Act.

It is for these reasons that it must be held that the Collector's powers to initiate suo motu inquiry was not hit by any limitation prior to 1991 and the Additional Tahsildar, when he initiated suo motu inquiry on 17th November, 1987, in the instant case, did not violate the provisions of Section 36-A(4) of the M.L.R. Code. The institution of the suo motu proceedings was very much in time and was not hit by the limitation of three years. This issue, claimed to be going to the root of the matter and as raised by the petitioner for the first time in this petition, thus, stands negatived and there is no merit in the challenge raised against the impugned order on that ground also.

12. In the result, this petition fails and the same is hereby dismissed. Rule discharged with costs.